William Lawrence, Darnell Price, and Joe Davis, Individually and as Partners, d/b/a/ Aiken Underground Utility Services and Mildred Sanders, Case 11–CA–16393

August 8, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

On April 16, 1997, Administrative Law Judge Robert C. Batson issued the attached Bench Decision, Supplement to Bench Decision, and Order. The General Counsel filed exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's findings and conclusions and to adopt the recommended Order as modified and set forth in full below.

No exceptions were filed to the judge's finding that the Respondent violated Section 8(a)(1) and (4) of the Act by denying employment to the Charging Party, Mildred Sanders, and her sister, Zerretta Cave, because the charging party had filed unfair labor practice charges against a union. To remedy this violation, the judge recommended that the Respondent take certain affirmative action to effectuate the policies of the Act. Specifically, the judge ordered that the Respondent make Mildred Sanders and Zerretta Cave whole for any loss of pay or benefits they incurred as a result of the discrimination against them, and, if it resumed operations, offer them employment at jobs that are the same or similar to those they would have held had the discrimination not occurred. The judge's recommended Order also included a requirement that the Respondent file a sworn certification with the Regional Office of the steps it had taken to comply with the Order. The judge noted that he was not including in the recommended Order a requirement that the Respondent post a notice to employees of this Decision and Order because the Respondent had not operated for several months at the time of the hearing and had no place of business or employees. The General Counsel has excepted to the judge's failure to provide for the mailing of notices to employees.

When the record indicates that a respondent's facility has closed, the Board routinely provides for the mailing of notices to employees. *Indian Hills Care Center*, 321 NLRB 144 (1996). Accordingly, we shall modify the judge's Order to include that requirement. Also, in accord with *Indian Hills*, we are appending the required notice, adding a requirement that the Re-

spondent make its records relevant to the remedy available to the Board upon request, and including the time frames for these actions.

ORDER

The National Labor Relations Board adopts the recommended order of the administrative law judge, as modified below, and orders that William Lawrence, Darnell Price, and Joe Davis, Individually and as Partners, d/b/a Aiken Underground Utility Services, Aiken, South Carolina, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to hire, or discharging, its employees because they have filed unfair labor practice charges against a union or exercised any rights guaranteed them by Section 7 of the Act.
- (b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action designed to effectuate the policies of the Act.
- (a) Make Mildred Sanders and Zerretta Cave whole for any loss of pay or benefits they may have suffered by reason of the discrimination against them described in the Bench Decision.
- (b) Should the Respondent resume operations, offer Mildred Sanders and Zerretta Cave employment in the same or similar jobs.
- (c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (d) Within 14 days after service by the Region, mail copies of the attached notice marked "Appendix." The Respondent shall duplicate and mail, at its own expense, a copy of the notice to all employees employed by the Respondent at any time since October 10, 1994.
- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to hire and WE WILL NOT discharge employees because they have filed unfair labor practice charges against a union or because they have exercised any rights guaranteed them by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of Act.

WE WILL make Mildred Sanders and Zerretta Cave whole for any loss of pay or benefits they may have suffered by reason of the discriminatory action taken against them.

WE WILL offer Mildred Sanders and Zerretta Cave employment in the same or similar jobs they were promised should we resume operation.

> WILLIAM LAWRENCE, DARNELL PRICE AND JOE DAVIS, INDIVIDUALLY AND AS PARTNERS, D/B/A AIKEN UNDERGROUND UTILITY SERVICES

Donald Gattalaro, Esq., for the General Counsel. William Lawrence and Joseph Davis, for the Respondent. Mildred Sanders, Pro Se, for the Charging Party.

BENCH DECISION AND CERTIFICATION

ROBERT C. BATSON, Administrative Law Judge. This case was heard by me at Aiken, South Carolina, on January 29, 1997. At the close of the hearing, I delivered a Bench Decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, which found that Respondent had engaged in certain unfair labor practices. Herewith, I issue a Supplement to Bench Decision which corrects and supplements the Decision in certain regards.

The portion of the transcript which contains my Bench Decision, pages 64–70, as corrected, is attached hereto as "Appendix A." I certify the accuracy thereof and the Supplement to the Bench Decision is attached as "Appendix B."

APPENDIX A

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MR. GATTALARO: With that I have no further questions. JUDGE BATSON: All right. Mr. Lawrence, you are excused if you have nothing further.

(The witness is excused.)

JUDGE BATSON: Gentlemen, there is basically no dispute as to the facts here. It appears the only ones [who] could dispute the pertinent facts of Aiken Underground Utility Services refusing to hire Ms. Sanders and Ms. Cave would be Mr. Price or Mr. Hart who seem to transmit a lot of information and they are not here to testify.

I think the case would be appropriate for a bench decision other than having you gentlemen file Briefs. Now let me say right now after I render this decision when I receive the transcript in my office I will issue a supplement to it setting forth the remedy to be complied with.

However, I want to keep in mind and you keep this in mind, Mr. Lawrence and Mr. Davis also, if anytime before—well, anytime you can go on and voluntarily comply with the Order, you know.

This would be Appendix A, Bench Decision. The charge in this case was filed by Mildred Sanders on January 30, 1995, and amended on February 15, 1995 and was properly served upon Respondent. The Answer to the Complaint denied data or factors which would give Board jurisdiction. However, the

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General Counsel called Mr. Alan Crawford who was employed as an East Coast controller for Cable Com installing fiber, cable, and telephone lines at the Savannah River Project.

Jurisdiction is based upon Respondents having a substantial impact on the National defense of the United States. I find that the case is properly before the Board and that jurisdiction has been established.

Now as I noted before going into the decision there is basically no dispute as to the facts. Ms. Sanders, Mildred Sanders, testified that in about September of 1994 at the Employment Office in Aiken—Aiken, South Carolina she went and filled out and completed an application to go to work for Aiken Underground Utilities Services.

Excuse me. There was also an Amended Complaint which labels the case or titles the case William Lawrence, Darnell Price, and Joe Davis, individually, and as partners d/b/a Aiken Underground Utility Services. The Amended Complaint was issued by the Acting Regional Director of Region XI on January 10, 1997. The only thing changed that I see is just the title of the case.

Ms. Sanders testified that in about September of 1994 she went to the Aiken Employment Office and filled out an application for employment with Aiken Utility Underground and it appears that by October 9th there was estimated a hundred people at some barber shop to complete applications to work

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for Aiken Underground.

Ms. Price and Ms. Cave, the other alleged discrimminatee who is a sister to Ms. Sanders I understand, were told by Mr. Price that if they passed a G.E.T. and a drug test they would be hired, and I understand from the testimony that Mr. Price gave them almost their option of whatever jobs they wanted.

Now it appears that they were told that the job would last two to five years. At that time the testimony of Ms. Sanders is that the partners in the operation were Darnell Price, William—Joe Davis, a Mr. Hart, and a Mr. Simon. Now this was in October.

Ms. Sanders and Ms. Cave completed their applications and Mr. Price who seemed to be the spokesman for the group, or at least the moving partner, told them to come in at about 9:00 the next day. This is the day after October 9th.

On October 10th Ms. Sanders testified Mr. Price wanted to talk individually and told Ms. Sanders she could have any job she wanted. She could be a foreman and, apparently, they offered Ms. Cave an option as to various jobs. Mr. Simon my notes indicate agreed with that and told her to return the next day.

Then about mid-October Ms. Sanders testified that Mr. Hart about the 14th or 15th of October said he would call them back to work, and then he told Hart according to Ms. Sanders's testimony and as I said it's not denied—told her that she

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had filed charges against the Carpenters Union which appears to be Case 11-CB-2395.

He didn't tell her the case number or anything like that just that because she had filed charges against the Union and it appears that Ms. Cave's testimony is that she also several years back filed charges against the Union. Hart told them I gather that Price had said that although they had passed the test and been given a green card they were never sent out to work.

My notes reflect that Hart says that Price said they didn't want them because they had filed charges against the Union. The testimony from Ms. Sanders is that and from Ms. Cave is that they were simply never called to work and I find that that violates Section 8(a)(1) and (4) of the National Labor Relations Act.

It also appears that in April of 1995 the organization went from a partnership to a corporation but was only active for about a month. Now Mr. William—Mr. William Lawrence—did not become a partner in the firm until January 25th of 1995. I will leave to the compliance stage of the proceeding what liability, if any, would fall on Mr. Lawrence since at the crucial time here he was not a part of the firm—of the partnership.

My Order will be to make Ms. Sanders and Ms. Cave whole for any loss of earnings or other benefits that they may have

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sustained as a result of this discrimination against them. It would be futile to order reinstatements since the organization no longer exist[s] either as a partnership or a corporation. I will leave to the compliance stage of the proceeding as to what liability that might be.

When I receive the transcript I will issue a supplemental decision and a certification of the transcript. (Off the record.)

(Off the record.)

JUDGE BATSON: On the record. In addition to the facts that I have stated earlier, Ms. Sanders testified that Mr. Price in a conversation with her acknowledged that he had heard that she had filed charges against the Union, and, accordingly, would not hire her. Neither Ms. Sanders nor Ms. Cave were ever called to work.

If no exceptions are filed as provided by 102.46 of the Board's Rules and Regulations these findings, and conclusions, and recommended Order shall be provided as provided in 102.48 of the Rules to be adopted by the Board and all objections to them shall be deemed waived for all purposes.

I have stated what my Order will be. To make them whole for any losses they may have sustained by reason of discrimination against them. That will be left to the compliance stage of the proceeding, and also as to whether or not since Mr. Lawrence was not at material times—that is, at

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the time that they were refused employment because of having filed charges against the Union, he was not a partner in the firm.

I believe the General Counsel's theory is that it was a continuing violation even after Mr. Lawrence became a partner. Again, I'll leave that to the compliance stage of the proceeding.

That concludes my decision.

Is there anything further, gentlemen?

MR. GATTALARO: Nothing from the General Counsel, Your Honor.

JUDGE BATSON: Mr. Lawrence?

Mr. Lawrence: No, sir.

JUDGE BATSON: Mr. Davis?

MR. DAVIS: No, sir.

JUDGE BATSON: All right, gentlemen, I thank you for your courtesy and the professional manner in which you presented your case, Mr. Gattalaro, and Mr. Lawrence, you did a good job also. I understand that you don't really dispute the facts. Your contention is simply that you should not be liable because you were not a partner. You were not a part of the firm at that time.

MR. LAWRENCE: That's correct.

JUDGE BATSON: That's your sole contention and I have stated that in my decision. It will be up to the compliance

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stage of the proceedings to determine what, if any, liability might evolve on you.

All right, if there is nothing further, gentlemen, this proceeding is now closed.

(Off the record.)

(Whereupon, the hearing in the above entitled matter was closed at 12:13 p.m.)

APPENDIX B

Donald Gattalaro, Esq., for the General Counsel. William Lawrence and Joseph Davis, for the Respondent. Mildred Sanders, Pro Se, for the Charging Party.

SUPPLEMENT TO BENCH DECISION

ROBERT C. BATSON, Administrative Law Judge. This case was heard by me on, January 29, 1997, at Aiken, South Carolina. At the close of evidence and argument, I delivered a Bench Decision, transcript pages 64–70, pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations and found that Respondent had engaged in certain unfair labor practices.

The Decision is further supplemented to include the following recommended Order.¹

[Recommended Order of the Supplement to Bench Decision omitted from publication.]

¹Inasmuch as Respondent had not operated for several months at the time of the hearing, had no place of business or employees, I shall not order a notice to employees be posted.